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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT ARIZONA
PHOENIX DIVISION

Jason Crews,

Plaintiff,

vs.
Tanpri Media & Arts, Inc.,
and
Elizabeth Beauvi,
And
Matthew Capozzoli;

Defendants.

Case No.: **CV23-01236-PHX-JJT**

First Amended Complaint for Violations
of:

1. NEGLIGENT VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

COMPLAINT

Preliminary Statement

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4 1. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone
5 Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in
6 response to widespread public outrage about the proliferation of intrusive, nuisance
7 calling practices. See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

8 2. The Defendants in this action Tanpri Media & Arts, Inc. and Elizabeth Beauvi
9 orchestrated placing at least one illegal prerecorded “robocall” to Plaintiff’s telephone
10 number and seven illegal telemarketing calls using an Automated Telephone Dialing
11 System (“ATDS”) to a number assigned to a cellular service which was included on the
12 national Do-Not-Call List.

13 3. Plaintiff never consented to receive such messages.

14 **Parties**

15 4. Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County,
16 Arizona at all relevant times, and a resident of this District.

17 5. Defendant Tanpri Media & Arts, Inc. (“Tanpri”) doing business as the
18 Consumer Legal Request is a Corporation, incorporated in New York, and in the
19 business of “Mass torts made simple... Camp Lejeune”.

20 6. Defendant Elizabeth Beauvi (“Beauvi”), a resident of Queens County, New
21 York, was at all times relevant the Chief Marketing Officer of Tanpri Media & Arts, Inc.
22 and directed the illegal calls complained of herein.

23 7. Defendant Matthew Capozzoli (“Capozzoli”), a resident of Cook County,
24 Illinois, was at all times relevant the Chief Marketing Officer of Consumer Legal
25 Request. and directed the illegal calls complained of herein.

26
27 ///

Jurisdiction & Venue

8. The Court has federal question subject matter jurisdiction over these TCPA claims: *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

9. The Court has specific personal jurisdiction over the Defendants because they have repeatedly placed calls to Arizona residents, including the Plaintiff. Defendants purposely placed calls to Arizona residents.

10. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District, as the calls to Plaintiff were placed into this District.

The Telephone Consumer Protection Act

8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the automated calling industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy[.]”: Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

9. Under the TCPA, an individuals candidate such as Beauvi may be personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the TCPA, which reads, inter alia:

[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

10. When considering individual liability under the TCPA, other Courts have agreed that an officer or individual involved in the telemarketing at issue may be personally liable under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*, 2013 U.S. Dist. LEXIS 159985, *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have

held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.”) (cleaned up) and *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

11. Beauvi personally participated in the complained-of actions by personally directing and authorizing the scripting and selecting of calls to be made, selecting, and orchestrating the calling strategy, including by choosing to use pre-recorded calls.

12. Capozzoli personally participated in the complained-of actions by personally directing and authorizing the scripting and selecting of calls to be made, selecting, and orchestrating the calling strategy, including by choosing to use pre-recorded calls.

Factual Allegations

13. To promote their services Defendants relied on prerecorded “robocalls.”

14. To promote their services Defendants also relied the use of ATDS systems.

15. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

16. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

17. The Cell Number has been on the Do-Not-Call registry since November 7, 2006.

18. Despite this registration, Defendants placed the calls summarized in the following table with an Automated Telephone Dialing Systems (“ATDS”).

call-date	call-time	callerID	pre-recorded	ATDS
12/9/22	12:25:00 PM	(480) 613-2983	FALSE	TRUE
1/17/23	10:17:00 AM	(480)365-9402	FALSE	TRUE
1/30/23	8:15:00 AM	(480)360-0666	TRUE	TRUE
1/31/23	8:42:00 AM	(480)856-8514	FALSE	TRUE
2/7/23	4:53:00 PM	(480) 360-0777	FALSE	TRUE
6/22/23	11:17:00 AM	(808) 435-2777	FALSE	TRUE
6/26/23	12:06:00 PM	(602) 293-0817	FALSE	TRUE

1
2 19. The Cell Number is assigned to a cellular phone used exclusively for personal
3 residential purposes.

4 20. Plaintiff did not consent to receive prerecorded or automated messages to his
5 Cell Number.

6 21. Plaintiff did not consent to receive telephone calls via ATDS.

7 22. The Cell Number is not associated with a business.

8 Calls to Plaintiff

9 23. Plaintiff had no prior business relationship with Defendants.

10 24. On or about January 30, 2023, at 8:15 am, Plaintiff received a call presenting
11 caller ID (480) 360-0666.

12 25. This call played a message with a pre-recorded voice.

13 26. After remaining on the line, Plaintiff was transferred to an individual who
14 identified themselves as Sven said they were calling about the Camp Legune settlement
15 and asked several screening questions.

16 27. After attempting and failing to transfer Plaintiff the caller disconnected the
17 call.

18 28. Due to the similarity between this the scripting and accents of the callers and
19 the scripting and accents of the callers on June 22, 2023, Plaintiff believes this call was
20 placed by Defendants.

21 29. On or about January 31, 2023, at 8:42 am, an individual Sven called and said
22 he spoke with Plaintiff the prior day.

23 30. Sven wanted to ask Plaintiff screening questions which plaintiff did not want
24 to answer and disconnected the call.

25 31. Due to the similarity between this the scripting and accents of the callers and
26 the scripting and accents of the callers on June 22, 2023, Plaintiff believes this call was
27 placed by Defendants.

1 32. On or about February 7, 2023, at 4:53 pm, plaintiff received a telephone call
2 form an individual who identified themselves as Amanda.

3 33. Due to the similarity between this the scripting and accents of the callers and
4 the scripting and accents of the callers on June 22, 2023, Plaintiff believes this call was
5 placed by Defendants.

6 34. On or about June 22, 2023, at 11:17 am, Plaintiff received a phone call
7 presenting caller ID (808) 435-2777 to the Cell Number.

8 35. After saying hello twice and hearing a beep, an individual who identified
9 himself as John came on the line, and said he was calling from "Camp Legune Watter
10 Settlement".

11 36. After asking plaintiff some various screening questions he said he was going
12 to transfer Plaintiff to a "Senior Supervisor" and coached him on what answers to
13 provide.

14 37. John then proceeded to transfer Plaintiff to a individual who identified himself
15 as Alex.

16 38. Alex re-asked the screening questions. Said he was going to transfer Plaintiff
17 to a licensed agent, and provided further coaching questions, and advised Plaintiff which
18 ailments to claim.

19 39. Alex advised Plaintiff to lie to the licensed agent and say he had leukemia in
20 order to get his cash settlement.

21 40. Alex asked Plaintiff to agree to future calls and to overwrite any prior do-not-
22 calls list he may be part of.

23 41. Alex then transferred Plaintiff.

24 42. Plaintiff was played recording which said "remaining on the line will serve as
25 consent for this communication to proceed despite any prior affiliation with a do not call
26 list."

1 43. Eventually an individual who identified themselves as Shania from Consumer
2 Legal Request.

3 44. Shania asked if Plaintiff consented to be contacted about this case.

4 45. Shania asked several screening questions.

5 46. Shania provided their call back number of 888-487-2154 and a website of
6 consumerlegalrequest.com.

7 47. Plaintiff asked to be placed on their internal do not call list and to be sent a
8 copy of their internal do not call policies.

9 48. Shania said sure and ended the call.

10 49. Plaintiff never provided his consent for or requested these calls.

11 50. The call was not necessitated by any emergency.

12 51. Plaintiff was harmed by these calls. He was temporarily deprived of the
13 legitimate use of his telephone, and his privacy was improperly invaded. Plaintiff was
14 charged for the calls. Moreover, the calls injured Plaintiff because they were frustrating,
15 obnoxious, annoying, and a nuisance, and they disturbed the solitude of Plaintiff.

16 52. On or about June 24, 2023, Plaintiff emailed defendants at
17 info@tanprimedia.com requesting to be placed on Defendants internal do-not-call list, to
18 be sent a copy of Defendant's do-not-call policy, and to send any evidence in their
19 possession of prior express consent to Plaintiff.

20 53. Plaintiff has not received a copy of their internal do-not-call policy or any
21 evidence of prior express consent.

22 54. Plaintiff avers and therefor believes this is because no Defendant possessed no
23 internal do-no-call policy exists.

24 **Defendants' Use of an ATDS**

25 55. The calls were conducted using an Automatic Telephone Dialing System
26 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the
27 capacity to store numbers to be called using a random or sequential number generator or
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1 to produce numbers to be called using a random or sequential number generator:
2 *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

3 56. The Third Circuit recently clarified that “Congress envisioned a broad
4 understanding of ‘equipment’” that constitutes an ATDS. It also clarified that the analysis
5 of whether an ATDS was used in violation of the TCPA centers around “whether the
6 Defendants employ[s] [ATDS] capacities to make automated calls”: *Panzarella v.*
7 *Navient Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that
8 Congress intended to “ban all autodialed calls” because Congress “found autodialer
9 technology to be uniquely harmful”: *Id.* at 879 (cleaned up).

10 57. In enacting the ATDS prohibition, the Third Circuit cited favorably to
11 Congressional understanding “that telemarketers could transform ordinary computers into
12 autodialers through minor and inexpensive modifications,” including by “relying on
13 computerized databases containing telephone numbers during their dialing campaigns”:
14 *Id.* at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS
15 prohibition, Congress intended to remedy the problems caused by callers using computer
16 software to dial numbers randomly or sequentially from a list or database: *Id.*

17 58. The system(s) that Defendants used to place the calls to Plaintiff is/are an
18 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the
19 phone, and only then connect Plaintiff to a human being.

20 59. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This
21 supports the inference that Defendants used an ATDS, such as one that “use[s] a random
22 [or sequential] number generator to determine the order in which to pick phone numbers
23 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

24 60. Other courts have held, post-*Facebook*, that allegations similar to those herein
25 of the absence of a relationship between the parties, and the random nature of the
26 automation device (such as the ability to randomly generate caller ID numbers), are all
27 indicia of use of a random or sequential dialing device. This gives rise to the inference at
28

1 the pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat'l*
2 *Republican Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at *11 (E.D.
3 Pa. May 26, 2021).

4 61. No facts exist here to support the conclusion that Defendants was calling from
5 a curated list of his past customers. In contrast to a company that dials calls en masse to
6 multiple individuals from a list of telephone numbers (as here), a company that calls its
7 existing customers utilizing an imported customer list does not place calls using an
8 ATDS. Such calling uses a database targeting existing customers' information rather than
9 computer-generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at
10 881–882.

11 62. Plaintiff is ignorant of the exact process by which the system(s) used by
12 Defendants operates other than by drawing the reasonable inference and alleging that the
13 system(s) stores or produces telephone numbers randomly or possibly sequentially based
14 on the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as
15 at least one district court explained, "The newly clarified definition of an ATDS is more
16 relevant to a summary judgment motion than at the pleading stage": *Gross v. GG Homes,*
17 *Inc.*, No. 3:21-cv-00271-DMS-BGS, 2021 WL 2863623, at *7 (S.D. Cal. July 8, 2021);
18 accord *Miles v. Medicredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo.
19 July 14, 2021).

20 **Defendants' Conduct Was Knowing and Willing**

21 63. Defendants knew his actions were in violation of the TCPA and willfully
22 continued his conduct.

23 **The TCPA Prohibits All Automated Calls to Protected Numbers**

24 64. The TCPA makes it unlawful "to make any call (other than a call made for
25 emergency purposes or made with the prior express consent of the called party) using an
26 automated telephone dialing system or an artificial or prerecorded voice ... to any
27 telephone number assigned to a ... paging service, cellular telephone service, specialized

1 mobile radio service, or other radio common carrier service, or any service for which the
2 party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

3 65. Congress singled out these services for special protection because Congress
4 realized their special importance in terms of consumer privacy (as is the case with
5 cellular phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356,
6 (2020) (Gorsuch, J. & Thomas, concurring in part and dissenting in part).

7 66. According to findings by the Federal Communications Commission ("FCC"),
8 which is the agency Congress vested with the authority to issue regulations implementing
9 the TCPA, such messages are prohibited because, as Congress found, automated or
10 prerecorded messages are a greater nuisance and invasion of privacy than live ones, are
11 costly, and are inconvenient.

12 67. The TCPA provides a private cause of action to persons who receive calls in
13 violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

14 68. These causes of action apply to users of any of four protected services (pager,
15 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch
16 system], or another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or
17 any service, including residential, VoIP, and landline services, for which the called party
18 is charged: *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md.
19 2013).

20 69. "Non-Emergency pre-recorded voice or autodialed calls to the destinations
21 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express
22 consent of the called party."

23 70. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone
24 solicitation to ... [a] residential telephone subscriber who has registered his or her
25 telephone number on the National Do-Not-Call Registry of persons who do not wish to
26 receive telephone solicitations that is maintained by the Federal Government" and defines
27 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of
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1 encouraging the purchase or rental of, or investment in, property, goods, or services,
2 which is transmitted to any person...": U.S.C. § 227(f)(15).

3 71. The FCC also recognized that "wireless customers are charged for incoming
4 calls whether they pay in advance or after the minutes are used": In re Rules and
5 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,
6 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

7 72. In 2013, the FCC required prior express written consent for all autodialed or
8 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.
9 Specifically, it ordered:

10 [A] Consumer's written consent to receive telemarketing robocalls must be signed
11 and be sufficient to show that the consumer: (1) received "clear and conspicuous
12 disclosure" of the consequences of providing the requested consent, i.e., that the
13 consumer will receive future calls that deliver prerecorded messages by or on behalf of a
14 specific seller; and (2) having received this information, agrees unambiguously to
15 receive such calls at a telephone number the consumer designates. In addition, the
16 written agreement must be obtained "without requiring, directly or indirectly, that the
17 agreement be executed as a condition of purchasing any good or service."

18 73. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot.*
19 *Act of 1991*, 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

20 74. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery
21 restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any
22 telephone call ... using an automatic telephone dialing system or an artificial or
23 prerecorded voice."

24 75. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency
25 telephone line," "guest room or patient room of a hospital, health care facility, elderly
26 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §
27 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing] to be initiated, any

1 telephone call that includes or introduces an advertisement or constitutes telemarketing,
2 using an automatic telephone dialing system or an artificial or prerecorded voice, to any
3 of the lines or telephone numbers described... "

4 76. The National Do-Not-Call Registry allows consumers to register their
5 telephone numbers and thereby indicate their desire to not receive telephone solicitations
6 at those numbers: 47 C.F.R. § 64.1200(c)(2).

7 77. A listing on the Registry "must be honored indefinitely, or until the
8 registration is cancelled by the consumer or the telephone number is removed by the
9 database administrator": *Id.*

10 78. The TCPA and implementing regulations prohibit the initiation of telephone
11 solicitations to residential telephone subscribers whose numbers are on the Registry and
12 provide a private right of action against any entity making those calls or "on whose
13 behalf" such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

14 79. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for
15 telemarketing purposes to a residential telephone subscriber unless such person or entity
16 has instituted procedures for maintaining a list of persons who request not to receive
17 telemarketing calls made by or on behalf of that person or entity." It goes on to establish
18 specific "minimum standards":

19 (1) "Persons or entities making calls for telemarketing purposes must have a
20 written policy, available upon demand..."

21 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and
22 trained in the existence and use of the do-not-call list."

23 (3) "If a person or entity making a call for telemarketing purposes ... receives a
24 request ... not to receive calls from that person or entity, the person or entity must record
25 the request and place the subscriber's name ... and telephone number on the do-not-call
26 list at the time the request is made ... must honor a residential subscriber's do-not-call
27 request within a reasonable time from the date such request is made."

1 (4) "A person or entity making a call for telemarketing purposes must provide the
2 called party with the name of the individual caller, the name of the person or entity on
3 whose behalf the call is being made, and a telephone number or address at which the
4 person or entity may be contacted."

5 (5) "A person or entity making calls for telemarketing purposes must maintain a
6 record of a consumer's request not to receive further telemarketing calls."

7 **Claims**

8 **Count One**

9 80. Plaintiff incorporates the foregoing allegations as fully set forth herein.

10 81. The foregoing acts and omissions of Defendants and/or their affiliates,
11 agents, and/or other persons or entities acting on Defendants' behalf constitute violations
12 of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to
13 Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

14 82. As a result of their unlawful conduct, Defendants invaded Plaintiff's
15 personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. §
16 227(b)(3)(B), entitling him to recover \$500 in civil fines for each violation and an
17 injunction requiring Defendants to stop his illegal calling campaign.

18 83. Plaintiff is also entitled to and does seek injunctive relief prohibiting
19 Defendants and/or his affiliates, agents, and/or other persons or entities acting on
20 Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or
21 sending messages, except for emergency purposes, to any number using an artificial or
22 prerecorded voice in the future.

23 84. Plaintiff is entitled to an award up to \$1500 in damages for each knowing
24 and willful violations of 47 U.S.C. § 227(b)(3)(B)

25 85. Defendants' violations were willful and/or knowing.

26 **Count Two**

27 86. Plaintiff incorporates the foregoing allegations as fully set forth herein.

87. Defendants called Plaintiff's private residential telephone number which was registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

88. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

89. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and willful violations of 47 U.S.C. § 227(c)(3)(F).

90. Defendants' violations were willful and/or knowing.

Relief Sought

WHEREFORE, Plaintiff requests the following relief:

A. Injunctive relief prohibiting Defendants from calling telephone numbers using an artificial or prerecorded voice and/or ATDS.

B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

C. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this July 1, 2023.


Jason Crews